UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIV.

IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION	Master File No. 12-md-02311 Honorable Marianne O. Battani
In Re: Wire Harness	2:12-cv-00103
In Re: Instrument Panel Clusters	2:12-cv-00203
In Re: Fuel Senders	2:12-cv-00303
In Re: Heater Control Panels	2:12-cv-00403
In Re: Bearings	2:12-cv-00503
In Re: Alternators	2:13-cv-00703
In Re: Anti-Vibrational Rubber Parts	2:13-cv-00803
In Re: Windshield Wiper Systems	2:13-cv-00903
In Re: Radiators	2:13-cv-01003
In Re: Starters	2:13-cv-01103
In Re: Ignition Coils	2:13-cv-01403
In Re: Motor Generator	2:13-cv-01503
In Re: HID Ballasts	2:13-cv-01703
In Re: Inverters	2:13-cv-01803
In Re: Elec. Powered Steering Assemblies	2:13-cv-01903
In Re: Fan Motors	2:13-cv-02103
In Re: Fuel Injection Systems	2:13-cv-02203
In Re: Power Window Motors	2:13-cv-02303
In Re: Auto. Transmission Fluid Warmers	2:13-cv-02403
In Re: Valve Timing Control Devices	2:13-cv-02503
In Re: Electronic Throttle Bodies	2:13-cv-02603
In Re: Air Conditioning Systems	2:13-cv-02703
In Re: Windshield Washer Systems	2:13-cv-02803
In Re: Spark Plugs	2:15-cv-03003
In Re: Automotive Hoses	2:15-cv-03203
In Re: Ceramic Substrates	2:16-cv-03803
In Re: Power Window Switches	2:16-cv-03903

THIS DOCUMENT RELATES TO:
End-Payor Actions

RESPONSE OF MARK RAY AND SEAN HULL TO END-PAYOR PLAINTIFFS' MOTION TO STRIKE OBJECTION

Undisputed class members Mark Ray and Sean Hull electronically filed their objection to the class action settlement, plan of allocation, and attorneys' fee in the Master Case (12-md-2311) by the March 16, 2017 objection deadline. Their objection included a proof of service, confirming, *inter alia*, that it was mailed on that date to the District Clerk.

More than a month later, just two days before the fairness hearing, and without making any attempt to confer with counsel, class counsel filed their motion to strike the objection of class members Mark Ray and Sean Hull. Their motion depends on the false premise that their objection was filed untimely. It was not.

I. Mark Ray and Sean Hull's Objections were Timely Filed by the March 16, 2017 Objection Deadline Based on the Directions in the Class Notice.

Class counsels' hyper technical "gotcha" motion to strike should be denied. Objectors Mark Ray and Sean Hull timely filed their objection electronically on the March 16, 2017 objection deadline.[1] This filing was received electronically by the District Clerk on that date.

Mr. Ray's and Mr. Hull's mailing of the objection to the District Clerk on the same date (documented in the Certificate of Service)[2] was subsequently received and inputted by the Clerk for filing into the various End-Payor Action cases making up the MDL, as well as into the Master Case, 12-md-02311.[3] The fact that the District Clerk made these subsequent (April 4, 2017) entries does not render the timely March 16th filing untimely.

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[1] Objection of Mark Ray and Sean Hull, 2-12-md-02311-MOB-MKM, ECF Doc. 1717.

[2] *Id*. at 29.

Mr. Ray's and Mr. Hull's objection follows the direction of the Class Notice, which twice references MDL No. 12-2311 without ever mentioning *any* other case number.[4] The Notice indicates the objection must be "received" no later than March 16, 2017.[5] The District Clerk "received" Mr. Ray's and Mr. Hull's objection electronically in MDL No. 12-2311 on March 16, 2017.[6]

To the extent this filing, which follows the instructions of the Class Notice, was insufficient, the Notice is fatally ambiguous. Class counsel should not be permitted to exploit an ambiguity that was of their own creation.

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[3] *See* Objection of Mark Ray and Sean Hull, Case No. 12-cv-00103, ECF No. 571; Case No. 12-cv-00203, ECF No. 231; Case No. 12-cv-00303, ECF No. 194; Case No. 12-cv-00403, ECF No. 194; Case No. 12-cv-0503, ECF No. 247; Case No. 13-cv-00703, ECF No. 146; Case No. 13-cv-00803, ECF No. 202; Case No. 13-cv-00903, ECF No. 154; Case No. 13-cv-01003, ECF No. 189; Case No. 13-cv-01103, ECF No. 171; Case No. 13-cv-01403; ECF No. 158; Case No. 13-cv-01503, ECF No. 142; Case No. 13-cv-01703, ECF No. 211; Case No. 13-cv-01803, ECF No. 135; Case No. 13-cv-01903, ECF No. 198; Case No. 13-cv-02103, ECF No. 90; Case No. 13-cv-02203, ECF No. 277; Case No. 13-cv-02303, ECF No. 112; Case No. 13-cv-02403, ECF No. 113; Case No. 13-cv-02503, ECF No. 212; Case No. 13-cv-02603; ECF No. 98; Case No. 13-cv-02703, ECF No. 110; Case No. 13-cv-02803; ECF No. 102; Case No. 15-cv-03003; ECF No. 70; Case No. 15-cv-03203, ECF No. 45; Case No. 16-cv-03803, ECF No. 67; Case No. 16-cv-03903, ECF No. 44; Case No. 2:12-md-02311-MOB-MKM, ECF No. 1730.

[4] Class Notice, at 4, 15, accessible at http://www.autopartsclass.com/docs/long_form_notice.pdf (last visited May 1, 2017).

[5] *Id*. at 17.

[6] Exhibit 1, Objection of Mark Ray and Sean Hull, 2:12-md-02311-MOB-MKM, ECF Doc. 1717.

The Class Notice also required objecting class members to identify "[t]he name of the Settling Defendant whose Settlement you are objecting to" and "[t]he vehicle part case that is the subject of your objection[.]"[7] Mr. Ray and Mr. Hull specified the relevant parts and the Defendants' settlements at issue based on information provided by the website.[8] Importantly, they also objected to "the proposed settlement, the plan of allocation, and request for attorneys' fees in In re: Automotive Parts Antitrust Litigation, No. 12-2311."[9] Thus, they did not, as class counsel claim, "expressly limit[] their objection to settlements with specific defendants concerning specific parts[.]"[10]

Because counsel for Mr. Ray and Mr. Hull believed (and continue to believe) their objections to the settlements, plan of allocation, and attorneys' fees are intrinsically intertwined with all end-purchaser settlements, and because the Class Notice suggests it, they filed their objection in the Master Case. This comports with this Court's August 8, 2016, Electronic Case Management Protocol Order, which instructs that "[p]apers applicable to all antitrust actions involving all automotive parts transferred to this Court shall be filed only in 12-md-02311."[11] *See also In re Wirebound Boxes Antitrust Litig.*, 128 F.R.D. 250, 252 (D. Minn. 1989) ("All orders, pleadings, motions, and other documents will, when filed and docketed in the master case file, be deemed filed and docketed in each individual case to the extent applicable.").

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[7] *Id*. at 17.

[8] Exhibit 1, Objection of Mark Ray and Sean Hull, 2-12-md-02311-MOB-MKM, ECF Doc. 1717, at 3-5.

[9] Exhibit 1, Objection of Mark Ray and Sean Hull, 2-12-md-02311-MOB-MKM, ECF Doc. 1717, at 8.

[10] Motion to Strike, at 3.

Class counsels' reliance on the Sixth Circuit's dismissal of notices of appeal filed in the Master Case is misguided. The Court of Appeals never suggested, as class counsel claim, that a filing in the Master Case is a nullity. The Court simply held that a notice of appeal must be filed in the case in which the order appealed from was entered as a matter of appellate jurisdiction.[12] Because the court's orders were entered in the individual cases, and not the Master Case, the notices of appeal were required in the individual cases. That holding does nothing to invalidate Mr. Ray's and Mr. Hull's timely filing in the Master Case here.

The cases cited by class counsel striking objections as untimely are inapposite for the obvious reason that Mr. Ray and Mr. Hull filed their objection timely based on the instructions in the Class Notice. Class counsel cite no case that would support their draconian position that an objection filed in the Master Case, consistent with directions in the Class Notice, is ineffectual.

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[11] August 8, 2016, Electronic Case Management Protocol Order, 2:12-md-02311-MOB-MKM, ECF Doc. 1448, at 16.

[12] *See* 6th Cir. Order, Appeal No. 16-2025, ECF No. 62; Appeal No. 16-2085, ECF No. 43; Appeal No. 16-2086, ECF No. 36.

Even indulging their unsubstantiated argument, there was no prejudice suffered as a matter of law. *See Klein v. O'Neal, Inc.*, 7:03-CV-102-D, 2010 WL 11463484, at *2 (N.D. Tex. Feb. 3, 2010) (denying motion to strike untimely objection after considering "whether any party would be unduly prejudiced by the timing"). It is beyond dispute that the Court and all parties were made aware of Mr. Ray's and Mr. Hull's objections by the March 16, 2017 objection deadline. Striking Mr. Ray's and Mr. Hull's objections under these circumstances would be inequitable and a clear abuse of due process.

II. Class Counsels' Hyper Technical Motion is an Improper Attempt to Drive Down Objections.

Class counsels' "gotcha" motion, filed just two days before the fairness hearing, represents an effort to eliminate valid objections to a problematic settlement. In similar circumstances, courts have observed that "class action lawyers may try to fend off interlopers who oppose a proposed settlement as insufficiently generous to the class[.]" *In re Trans Union Corp. Privacy Litig.*, 629 F.3d 741, 743 (7th Cir. 2011) (Posner, J.). But, these tactics must be curtailed – objectors such as Mr. Ray and Mr. Hull "prevent[] cozy deals that favor class lawyers and defendants at the expense of class members. . . ." *Id*.

Further, given class counsels' efforts to excise objections from the process, there should be no inference taken from the relatively low number of objecting class members. *See In re General Motors Corp. Pick-Up Truck Fuel Tank Prod.*

Liab. Litig., 55 F.3d 768, 785 (3d Cir. 1995) (class members' "[a]cquiescence to a bad deal is something quite different than affirmative support") *Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 680-681 (7th Cir. 1987) ("where notice of the class action is . . . sent simultaneously with the notice of the settlement itself, the class members are presented with what looks like a *fait accompli*"); Christopher R. Leslie, *The Significance of Silence: Collective Action Problems and Class Action Settlements*, 59 FLA. L. REV. 71, 73 (2007) ("Silence may be a function of ignorance about the settlement terms or may reflect an insufficient amount of time to object. But most likely, silence is a rational response to any proposed settlement even if that settlement is inadequate. For individual class members, objecting does not appear to be cost beneficial. Objecting entails costs, and the stakes for individual class members are often low.").

III. This Court Should Deny Class Counsels' Motion to Strike Based on their Failure to Seek Concurrence.

As a procedural matter, class counsels' motion fails to comply with this District's conference requirements, and should also be denied on this basis. Local Rule 7.1 instructs that "[t]he movant ***must*** ascertain whether the contemplated motion . . . will be opposed." E.D. MICH. LR 7.1(a)(1)(emphasis added). If concurrence cannot obtained, the motion must state: "(A) there was a conference between attorneys or unrepresented parties and other persons entitled to be heard on the motion in which the movant explained the nature of the motion or request and its legal basis and requested but did not obtain concurrence in the relief sought; [or] (B) despite reasonable efforts specified in the motion or request, the movant was unable to conduct a conference. . . .” LR 7.1(a)(2).

Further, this Court’s Practice Guidelines confirm that “Counsel ***must*** comply with E.D. Mich. LR 7.1(a) and seek concurrence before filing a motion.” Practice Guidelines for Judge Marianne O. Battani, accessible at https://www.mied.uscourts.gov/index.cfm?pageFunction=chambers&judgeid=1 (emphasis added). Yet, class counsels’ motion to strike fails to comply with Local Rule 7.1 entirely. Class counsel made no effort to conduct a conference with Objectors Mark Ray and Sean Hull’s counsel before filing their motion . And, they provided no explanation for their failure to conduct a conference. Accordingly, the motion to strike cannot be granted. *See Shehee v. Saginaw County*, 13-13761, 2014 WL 12604850, at *2 (E.D. Mich. Nov. 19, 2014) (dismissing motion based on failure to indicate that movant “sought, but did not obtain, concurrence in their motions[,] and noting “[i]t is not up to the Court to expend its energies when the parties have not sufficiently expended their own”) (citing *Hasbro, Inc. v. Serafino*, 168 F.R.D. 99, 101 (D. Mass. 1996); *Little Caesar Enterprises, Inc. v. Divine Commercial Enterprises, Inc.*, 11-13163, 2011 WL 3235475, at *1 (E.D. Mich. July 28, 2011) (denying motion for preliminary injunction based on failure to comply with Local Rule 7.1’s conference requirement and observing “meaningful, good faith compliance with the rule" is required); *Dragoiu v. HUD*, 10-CV-11896, 2011 WL 2174532, at *1 (E.D. Mich. June 3, 2011) (striking motion that did "not state in the motion that concurrence was sought . . . before the motion was filed").

IV. To the Extent Timely Electronic Filing in the Master Case is Deemed Insufficient, Mark Ray and Sean Hull Submit Supplemental Objections to the Ambiguity of the Class Notice.

To the extent Mr. Ray's and Mr. Hull's objection is considered untimely despite their electronic filing by the deadline in the case number that was identified on the Class Notice, they submit this Supplemental Objection to the ambiguity in the Class Notice, which violates due process. Due process requires that class notice must be "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950). Notice is a critical part of class action practice; notice provides the structural assurance of fairness that permits representative parties to bind absent class members. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 627 (1997). Defects in the Class Notice render a final approval order constitutionally infirm and mandate reversal. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974) (holding "mandatory notice pursuant to subdivision (c)(2) . . . is designed to fulfill the requirements of due process to which the class action procedure is of course subject").

The Class Notice here states the objection "must be received no later than March 16, 2017" and references MDL No. 12-2311 twice without referencing another case number. An objection filed electronically by March 16, 2017 in MDL No. 12-2311, and "received" by the District Clerk on that date, necessarily complies with the Class Notice. To the extent it does not, the meaning of "received" must be clarified. Accordingly, to the extent class counsels' interpretation of the requirements for filing objections is adopted, class members Mark Ray and Sean Hull urge that a new notice must be issued clarifying these procedures, and allowing for a new objection deadline and an additional fairness hearing.

CONCLUSION

Class members Mark Ray and Sean Hull respectfully request that this Court deny End-Payor Plaintiffs' Motion to Strike Untimely Objections to Round Two Settlements. Alternatively, Mr. Ray and Mr. Hull submit this as a Supplemental Objection, and request that the Court re-issue notice for the objection process to begin anew.

Dated: May 1, 2017

Respectfully submitted,

/s/ *Christopher A. Bandas*
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Certificate of Service

The undersigned certifies that today he filed the foregoing response on ECF which will send electronic notification to all attorneys registered for ECF-filing.

Dated: May 1, 2017

/s/ *Christopher A. Bandas*
Christopher A. Bandas